



# DENSITY BONUS

(Updated) May 2022

## WHAT IS DENSITY BONUS?

Density Bonus is a State law that allows a property owner to increase density (the total number of dwelling units) on their property above the maximum set under a city's local land use plan (referred to as the General Plan). In exchange for the increase of density, a specified number of the total dwelling units must be reserved for very low, low- or moderate-income households or for seniors, transitional foster youth, disabled veterans, homeless persons, or student housing. [Government Code §65915]

## ARE THERE CRITERIA FOR WHERE DENSITY BONUS PROJECTS MUST BE LOCATED?

No. For a project to be eligible for density bonus, State law only requires that the maximum density established under the City's General Plan results in five (5) or more dwelling units. Any project meeting State law requirements can qualify for density bonus and be located anywhere in the City. [Government Code §65915(b)(1); §65915(i)]

## IS THE CITY REQUIRED TO FOLLOW ALL ASPECTS OF THE DENSITY BONUS LAW (STATE LAW)?

Yes. A jurisdiction may not enact local laws that conflict with State law or prohibit what the legislature intends to authorize. [Cal Const Art XI, Section 7; Northern Cal. Psychiatric Soc'y v. City of Berkeley (1986) 178 CA 3d 90]

## HOW DOES DENSITY BONUS WORK?

Jurisdictions are required to grant a density bonus and other incentives/concessions or waivers to housing projects that contain one of the following [Government Code §65915(b)(1) (A-G); §65915(g)]:

- At least 10 percent of the total units are restricted to lower income residents.
- At least 5 percent of the total units are restricted to very low-income residents.

- Senior citizen housing development with at least 35 units (no affordable units required).
- At least 10 percent of the total units in a for-sale common interest development (such as a condominium) are restricted to moderate income residents.
- At least 10 percent of the total units are restricted to transitional foster youth, disabled veterans or homeless persons restricted for very low income.
- At least 20 percent of the total units are restricted to lower income students in a student housing development.
- A 100 percent affordable housing development (excluding manager's unit(s)) restricted to very low, low- and moderate-income residents (maximum 20 percent of total units for moderate income residents).
- Mobile home park age-restricted to 55 and older (no affordable units required).
- At least 1 acre of land, or land of sufficient size to permit at least 40 units, is dedicated to the City for very low-income units, and the land is appropriately zoned and includes access to necessary public utilities and infrastructure needed for such housing.

## WHAT IS THE DENSITY BONUS AMOUNT?

The number of additional units allowed under this program is set on a sliding scale, based upon three factors:

- The percentage of units in the project that will be set aside as affordable;
- The household income category of those affordable units (very low, low, or moderate household income); and
- If the project is located within a half mile of a major transit stop (only applicable for housing developments where 100 percent of units are affordable)



# FAQ SHEET

## Density Bonus

Refer to the chart located on page 6 of this FAQ sheet for the sliding scale. [Government Code §65915(f)]

### HOW ARE FRACTIONAL UNITS ROUNDED?

Rounding requirements vary depending upon the calculation being considered.

- Calculating Base Density. In calculating the maximum allowable residential units for base density, State law and City code requires that fractional units be rounded up to the next whole number. [Government Code §65915(q) and EMC Section 30.16.020(C)(5)(a)].
- Calculating the Percentage of Affordable Units. In determining the percentage of units being reserved as affordable, State law requires that the percentage of affordable units on the site must exceed the percentage established in the sliding scale. [Government Code §65915(f)(5) and EMC Section 30.16.020(C)(5)(b)].
- Calculating Density Bonus. In calculating the number of bonus units above the Base Density, State law requires that fractional units are rounded up to the next whole number. [Government Code §65915(f)(5)]

### CAN YOU PROVIDE A THEORETICAL EXAMPLE OF THE DENSITY CALCULATION?

A property is 1.4 gross acres in size, with a General Plan designation of R-8 (8 dwelling units per acre), has a base density of 11.2 units, which rounds up to 12 units.

The applicant proposes that one unit will be reserved for a very low-income household. One unit out of twelve units equates to 8.33 percent.

Based on the sliding scale found on page 6 of this FAQ sheet, with 8 percent of the units being affordable and reserved for a very low-income household (see first two columns of the table on page 6), the project's base density can increase by 27.5 percent, for a total of 15.3 units,

which rounds up to 16 total units. The math breakdown is as follows:

- $1.4 \text{ gross acre} \times 8 \text{ dwelling units/gross acre} = 11.2 \text{ rounded up to } 12 \text{ units}$
- $1 \text{ affordable unit} \div 12 \text{ units} = 8.33\% \text{ or } 8\%$
- $8\% \text{ of "very low income" (see table on page 6)} = 27.5\% \text{ density bonus}$
- $12 \text{ units} \times 27.5\% = 3.3 \text{ rounded up to } 4 \text{ "bonus" units}$
- $4 \text{ units} + 12 \text{ units} = 16 \text{ units}$

### ARE THERE SPECIAL PARKING REDUCTIONS THAT ARE ALLOTTED FOR DENSITY BONUS PROJECTS?

Yes, upon the request of the developer, the City shall not require vehicular parking ratios, (inclusive of handicapped and guest parking), that exceed the following [Government Code Section 65915 (p)(1)]:

Bedroom Count	Parking Required
0-1	1 SPACE
2-3	1.5 SPACES
4+	2.5 SPACES

In addition, there are a number of additional parking reductions available, based upon certain characteristics of the project [Government Code Section 65915 (p)(2)]:

- If a development includes at least 20 percent of low-income or 11 percent very low-income units, and is located within ½ mile of a major transit stop, and has unobstructed access to the major transit stop from the development, the City may not impose a parking ratio that exceeds 0.5 spaces per unit.
- If a development consists solely of rental units with an affordable housing cost to lower income families (*Health & Safety Code §50052.5*), upon the request of the developer, the City shall not impose vehicular parking standards when the following conditions occur [Government Code Section 65915 (p)(3)]:



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## Density Bonus

PROJECT CHARACTERISTIC
The development is located within ½-mile of a major transit stop <sup>1</sup> and there is unobstructed access <sup>4</sup> to the major transit stop from the development project
The development is a for-rent housing development for those age 62 or older <sup>2</sup> and provides either paratransit service or unobstructed access <sup>4</sup> , within ½-mile, to a fixed bus route that operates at least eight times per day
The development is a special need housing development <sup>3</sup> and has either paratransit service or unobstructed access <sup>4</sup> , within ½-mile, to a fixed bus route that operates at least eight times per day
<sup>1</sup> As defined in Public Resources Code §21155 <sup>2</sup> In compliance with §51.2 and 51.3 of the Civil Code <sup>3</sup> As defined in Health & Safety Code §51312 <sup>4</sup> A development shall have unobstructed access if a resident is able to access the major transit stop without encountering a natural or constructed impediment.

If the total number of parking spaces required for development is other than a whole number, the number shall be rounded up to the next whole number. Onsite parking may be provided through tandem parking or uncovered parking, but not through on-street parking. An applicant may request parking incentives or concessions beyond those provided above. [Government Code §65915(p)(5)]

### WHAT IS AN INCENTIVE/CONCESSION?

Incentives/Concessions are reductions in design standards or modifications of other development standard that result in cost reductions needed to provide for affordable homes.

In addition to an increase in density, an applicant may apply for one or more "incentive/concession" for a density bonus project. [Government Code §65915(d)(1); §65915(k) and EMC Section 30.16.020(C)(6)(a)]

"Development standards" includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan

element, specific plan, charter, or other local condition, law, policy, resolution, or regulation. [Government Code Section 65915(o)(1)].

Provisions for incentives and concessions do not "limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city... or the waiver of fees or dedication requirements." [Government Code Section 65915(l)].

### HOW MANY INCENTIVES/CONCESSIONS CAN BE REQUESTED?

The number of incentives/concessions requested varies with the amount and type of reserved units as reflected below. Percentages between these ranges are rounded down. For example, the sample project that reserved 8 percent of the units for very low income receives one incentive/concession. [Government Code §65915(d) (2) (A-C)]

Max. # of Incentives	Very Low-Income Percentage	Low Income Percentage	Moderate Income Percentage
1	5%	10%	10%
2	10%	17%	20%
3	15%	24%	30%
4	100% Very Low/Low/Moderate (Max. 20% Moderate)	100% Very Low/Low/Moderate (Max. 20% Moderate)	100% Very Low/Low/Moderate (Max. 20% Moderate)

Reasonable documentation is required to justify the incentive/concession request.

### WHAT ARE WAIVERS?

Waivers are yet another form of assistance under State law, separate from incentives/concessions. A waiver is a modification of "development standards" that would physically preclude the construction of the project at the density or with the incentives/concessions allowed under State law.



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## Density Bonus

Waivers may be requested for projects that exceed the Maximum Allowable Residential Density or that receive incentives or concessions. [EMC 30.16.020(C)(6)(c)]

Waiver requests must be accompanied by reasonable documentation to demonstrate that the usual development standards would physically preclude development of the project with a density bonus. [Government Code §65915(e)(1); §65915(e)(2)]

### **PROP A SET NEW HEIGHT LIMITS OF TWO STORIES OR 30 FEET. CAN A DEVELOPER REQUEST A WAIVER FROM THIS STANDARD?**

Yes. A height limitation qualifies as a development standard for which a developer may request a waiver. [Government Code §65915(o)(1)]

### **CAN THE CITY DENY AN INCENTIVE/CONCESSION OR WAIVER?**

Yes. Nothing in the State law requires a local government to grant an incentive/concession or waiver potentially resulting in a specific, adverse impact upon public health, safety or environment or which is contrary to federal or state law. An incentive/concession can also be denied if it does not result in cost reductions needed to provide for affordable housing. However, the burden is on the jurisdiction to justify denial of an incentive/concession or waiver. Incentives/concessions and waivers must be consistent with the Coastal Act.

### **HOW LONG MUST THE RESERVED UNITS REMAIN AFFORDABLE?**

Both rental and “for sale” units are required to be income restricted for a period of 55 years, or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. An affordable housing agreement will be recorded against the property to secure the affordability restrictions. [EMC 30.16.020(C)(9); Government Code §65915 (c)(1).]

An applicant is required to ensure that the initial occupant of the “for sale” units are occupied by a qualified person(s) or family at the income level that qualified the applicant for the award of density bonus at the very low, low- or moderate-income level. The units are required to be offered at an affordable housing cost defined by §50052.5 of the Health and Safety Code. [Government Code §65915 (c)(2)]

\*Additional requirements may be required for how long affordable units must remain affordable in accordance with EMC Chapter 30.41 (Affordable Housing).

### **WHAT IF THERE ARE EXISTING HOUSING UNITS FOR RENT ON THE PROPERTY?**

Applications submitted after January 1, 2015, must indicate if the property has existing rental units or rental units that were vacated or demolished within a five-year period preceding the application date. The proposed development must replace the units if one of the following conditions applies:

- A recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of lower or very low income exists;
- The units are/were subject to any other form of rent or price control through a public entity’s valid exercise of its police power; or
- The units are/were occupied by lower or very low-income households.

If the income of past or present occupants is unknown, state Density Bonus Law describes how to determine the required affordability. The City of Encinitas requires all applicants to provide a letter “under penalty of perjury under the laws of the State of California that the foregoing is true and correct”, for all required information on existing units on a project site.

[Government Code §65915(c)(3)(A)] and EMC Section 30.16.020(C)(4)(b)(i)(E-F).]



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## Density Bonus

### WHAT DOES REPLACE MEAN?

The proposed development must replace the units, as described above (either existing, vacated or demolished within a five-year period preceding the application) by providing at least the same number of units of equivalent size. "Equivalent size" also means that the replacement units contain at least the same total number of bedrooms as the units being replaced. The replacement unit(s) must be made available at an affordable rent or housing cost to persons and families in the same or lower income category as those households in occupancy or that formerly occupied the homes. All replacement calculations resulting in fractional units must be rounded up to the next whole number. [Government Code §65915 (3)(B)].

Contact Planning Services at 760-633-2710 or [planning@encinitasca.gov](mailto:planning@encinitasca.gov) with any questions.



### CAN INCLUSIONARY AFFORDABLE UNITS SATISFY THE STATE DENSITY BONUS AFFORDABLE UNIT REQUIREMENT?

Yes, inclusionary units may be counted toward satisfying the state density bonus affordable unit requirement.

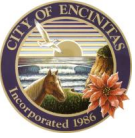
### WHAT IS THE QUALITY AND DESIGN OF AFFORDABLE UNITS?

Affordable units shall be comparable in exterior appearance and overall quality of construction to market-rate units in the same housing development. Interior finishes may differ from those provided in market rate units, but neither the workmanship nor the products utilized may be substandard or inferior quality. The number of bedrooms of the affordable units shall at least equal the minimum number of bedrooms of the market-rate units.

### WHERE CAN I LEARN MORE?

For more information on Density Bonus and permit submittal requirements, please review the Density Bonus Supplement Application and EMC Section 30.16.020.C. Please note that state Density Bonus Law is complex, and this fact sheet only summarizes major provisions. Applicants should also review specific provisions of Government Code Sections 65915 – 65918 before making an application.





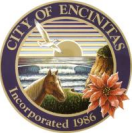
# FAQ SHEET

## Density Bonus

**Density Bonus<sup>(1)</sup> Calculation Table**

Affordable Units Provided <sup>(2)</sup>	Very Low Income Density Bonus	Low Income Density Bonus	Moderate Income Density Bonus <sup>(3)</sup>	Land Donation Density Bonus	Senior Density Bonus <sup>(4)</sup>	Foster Youth, Disabled Veterans, Homeless	College Student Housing
5%	20%	-	-	-	20%	-	-
6%	22.5%	-	-	-	20%	-	-
7%	25%	-	-	-	20%	-	-
8%	27.5%	-	-	-	20%	-	-
9%	30%	-	-	-	20%	-	-
10%	32.5%	20%	5%	15%	20%	20%	-
11%	35%	21.5%	6%	16%	20%	20%	-
12%	38.75%	23%	7%	17%	20%	20%	-
13%	42.5%	24.5%	8%	18%	20%	20%	-
14%	46.25%	26%	9%	19%	20%	20%	-
15%	50%	27.5%	10%	20%	20%	20%	-
16%	50%	29%	11%	21%	20%	20%	-
17%	50%	30.5%	12%	22%	20%	20%	-
18%	50%	32%	13%	23%	20%	20%	-
19%	50%	33.5%	14%	24%	20%	20%	-
20%	50%	35%	15%	25%	20%	20%	35%
21%	50%	38.75%	16%	26%	20%	20%	35%
22%	50%	42.5%	17%	27%	20%	20%	35%
23%	50%	46.25%	18%	28%	20%	20%	35%
24%	50%	50%	19%	29%	20%	20%	35%
25%	50%	50%	20%	30%	20%	20%	35%
26%	50%	50%	21%	31%	20%	20%	35%
27%	50%	50%	22%	32%	20%	20%	35%
28%	50%	50%	23%	33%	20%	20%	35%
29%	50%	50%	24%	34%	20%	20%	35%
30%	50%	50%	25%	35%	20%	20%	35%
31%	50%	50%	26%	35%	20%	20%	35%
32%	50%	50%	27%	35%	20%	20%	35%
33%	50%	50%	28%	35%	20%	20%	35%
34%	50%	50%	29%	35%	20%	20%	35%
35%	50%	50%	30%	35%	20%	20%	35%
36%	50%	50%	31%	35%	20%	20%	35%
37%	50%	50%	32%	35%	20%	20%	35%
38%	50%	50%	33%	35%	20%	20%	35%
39%	50%	50%	34%	35%	20%	20%	35%
40%	50%	50%	35%	35%	20%	20%	35%
41%	50%	50%	38.75%	35%	20%	20%	35%
42%	50%	50%	42.5%	35%	20%	20%	35%
43%	50%	50%	46.25%	35%	20%	20%	35%
44%	50%	50%	50%	35%	20%	20%	35%
100% <sup>(5)</sup>	80%	80%	80%	35%	20%	20%	35%

1. All density bonus calculations resulting in fractions are rounded up to the next whole number.
2. Affordable unit percentage is calculated excluding units added by a density bonus.
3. Moderate income density bonus applies to for sale units, not to rental units.
4. No affordable units are required for senior units.
5. Applies when 100% of the total units (other than manager's units) are restricted to very low, lower and moderate income (maximum 20% moderate)



### Affordability Instructions

#### Rental Units:

The State income limits are published as approximate percentages of the Area Median Income (AMI). The income categories are as follows: extremely low-income (30% AMI), very-low income (50% AMI), low-income (80% AMI) and moderate-income (120% AMI). Income restrictions will vary by project. The income limits are adjusted based on household size and are updated annually by the State Department of Housing and Community Development (HCD). To determine the maximum annual gross income for an eligible tenant household, view the chart on the following page, or visit: <http://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits.shtml>.

The affordable rent is based on the number of the bedrooms and the applicable income restriction for the property. The calculation to determine the maximum affordable rent for each income category is described in Health and Safety Code §50053 and adjusted on an annual basis; the current year's maximum affordable rents can be found on the following page: <http://encinitasca.gov/Resident/Housing-Resources/For-Developers-Property-Managers>. If the tenant pays for the utilities, (gas, electricity, water, sewer, and trash) an allowance must be deducted from the maximum rent. The utility allowance is based on appliance type and number of bedrooms. The Utility Allowance Schedule is updated annually, and can be found here: <http://encinitasca.gov/Resident/Housing-Resources/For-Developers-Property-Managers>.

In accordance with Encinitas Municipal Code 30.16.020(C)(9), an Affordable Housing Agreement shall be executed between the owner and the City and recorded against the property to guarantee the affordability of the unit for the duration of the affordable term of 55 years.

#### For Sale Units:

The State income limits are published as approximate percentages of the Area Median Income (AMI). The income categories are as follows: extremely low-income (30% AMI), very-low income (50% AMI), low-income (80% AMI) and moderate-income (120% AMI). Income restrictions will vary by project. The income limits are adjusted based on household size and are updated annually by HCD. To determine the maximum annual gross income for an eligible homebuyer household, view the chart on the following page, or visit: <http://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits.shtml>.

The affordable sales price is based on the number of the bedrooms and the applicable income restriction for the property. The calculation to determine the maximum affordable housing cost for each income category is described in Health and Safety Code §50052.5 and adjusted on an annual basis; the current year's maximum affordable housing costs for homeowners can be found on the following page: <http://encinitasca.gov/Resident/Housing-Resources/For-Developers-Property-Managers>. The sales price calculation includes reasonable housing costs, which includes, but not limited to, principal and interest, property taxes and assessments, property insurance, property maintenance and repairs, Homeowners' Association fees, additional district fees (if applicable), and an allowance for utilities based on the current Utility Allowance Schedule, published by the Encinitas Housing Authority. The utility allowance is based on appliance type and number of bedrooms. The Utility Allowance Schedule is updated annually, and can be found here: <http://encinitasca.gov/Resident/Housing-Resources/For-Developers-Property-Managers>. For the purposes of estimating the sales prices, the developer will use the following assumptions; five percent down payment, the most recent Freddie Mac monthly average commitment rate for 30-year fixed-rate mortgages, and a reasonable quote for homeowners' insurance based on comparable homes in the community.



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## Density Bonus

In accordance with Encinitas Municipal Code 30.16.020(C)(9), an Affordable Housing Agreement shall be executed between the owner and the City and recorded against the property to guarantee the affordability of the unit for the duration of the affordable term of 55 years. At the time of initial sale, the homebuyer household shall execute a new Affordable Housing Agreement with the City.

### State of California – Housing and Community Development (HCD)

#### 2021 Income and Affordable Housing Cost Schedule

(Note that this is updated annually in May)

Maximum Annual Income Limits				
Household Size	30% AMI (Extremely Low)	50% AMI (Very Low)	80% AMI (Low)	120% AMI (Moderate)
1	\$25,450	\$42,450	\$67,900	\$79,850
2	\$29,100	\$48,500	\$77,600	\$91,300
3	\$32,750	\$54,550	\$87,300	\$102,700
4	\$36,350	\$60,600	\$97,000	\$114,100
5	\$39,300	\$65,450	\$104,800	\$123,250
6	\$42,200	\$70,300	\$112,550	\$132,350
7	\$45,100	\$75,150	\$120,300	\$141,500
8	\$42,000	\$80,000	\$128,050	\$150,600

Affordable Housing Costs *					
Renters	Unit Size	30% AMI (Extremely Low)	50% AMI (Very Low)	60% AMI (Low)	110% AMI (Moderate)
	Studio	\$499	\$832	\$999	\$1,831
	1-Bedroom	\$571	\$951	\$1,141	\$2,092
	2-Bedroom	\$642	\$1,070	\$1,284	\$2,354
	3-Bedroom	\$713	\$1,189	\$1,427	\$2,615
	4-Bedroom	\$770	\$1,284	\$1,541	\$2,824
	5-Bedroom	\$827	\$1,379	\$1,655	\$3,034
Homeowners	Unit Size	30% AMI (Extremely Low)	50% AMI (Very Low)	70% AMI (Low)	110% AMI (Moderate)
	Studio	\$499	\$832	\$1,165	\$2,136
	1-Bedroom	\$571	\$951	\$1,331	\$2,441
	2-Bedroom	\$642	\$1,070	\$1,498	\$2,746
	3-Bedroom	\$713	\$1,189	\$1,664	\$3,051
	4-Bedroom	\$770	\$1,284	\$1,797	\$3,295
	5-Bedroom	\$827	\$1,379	\$1,931	\$3,539

Effective: 4-26-2021 --- San Diego Median Income: \$95,100 -- Source: <http://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits.shtml>

	RENTER	OWNER
Health & Safety Code	§§50053	§§50052.5
Extremely Low	30%	30%
Very Low	50%	50%
Low	60%	70%
Moderate	110%	110%

\*Allowance for renter-paid utilities must be deducted from rent. See the most recent Utility Allowance Schedule published by the Encinitas Housing Authority. Utility Allowance and other housing costs (HOA, taxes, insurance, etc...) must be deducted from the affordable housing cost for homeowners/for sale units.